

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE)
LITIGATION)

THIS DOCUMENT RELATES TO:)

MDL NO. 1456
Civil Action No. 01-12257-PBS

The City of New York v. Abbott Labs., et al.)
(S.D.N.Y. No. 03-CV-06054))
County of Suffolk v. Abbott Labs., et al.)
(E.D.N.Y. No. CV-03-229))
County of Westchester v. Abbott Labs., et al.)
(S.D.N.Y. No. 03-CV-6178))
County of Rockland v. Abbott Labs., et al.)
(S.D.N.Y. No. 03-CV-7055))
County of Putnam v. Abbott Labs, et al.)
(S.D.N.Y. No. 05-CV-04740))
County of Dutchess v. Abbott Labs, et al.)
(S.D.N.Y. No. 05-CV-06458))
County of Putnam v. Abbott Labs, et al.)
(S.D.N.Y. No. 05-CV-04740))
County of Washington v. Abbott Labs, et al.)
(N.D.N.Y. No. 05-CV-00408))
County of Rensselaer v. Abbott Labs, et al.)
(N.D.N.Y. No. 05-CV-00422))
County of Albany v. Abbott Labs, et al)
(N.D.N.Y. No. 05-CV-00425))
County of Warren v. Abbott Labs, et al.)
(N.D.N.Y. No. 05-CV-00468))
County of Greene v. Abbott Labs, et al.)
(N.D.N.Y. No. 05-CV-00474))
County of Saratoga v. Abbott Labs, et al.)
(N.D.N.Y. No. 05-CV-00478))

Judge Patti B. Saris

[Caption continues on Next Page]

**IVAX CORPORATION, IVAX PHARMACEUTICALS, INC. AND BARR
LABORATORIES, INC.'S REPLY IN SUPPORT OF JOINT RENEWED MOTION TO
DISMISS THE CLAIMS OF SUFFOLK COUNTY IN THE NEW YORK COUNTIES'
FIRST AMENDED CONSOLIDATED COMPLAINT ON THE GROUND THAT THEY
WERE PREVIOUSLY DISMISSED FROM THE CASE PURSUANT TO THE COURT'S
"SUFFOLK 13" DECISION**

County of Columbia v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00867))
 Essex County v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00878))
 County of Ulster v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00123))
 County of Chanango v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00354))
 County of Broome v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00456))
 County of Onondaga v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00088))
 County of Tompkins v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00397))
 County of Cayuga v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00423))
 County of Madison v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00714))
 County of Cortland v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00881))
 County of Herkimer v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00415))
 County of Oneida v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00489))
 County of Fulton v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00519))
 County of St. Lawrence v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00479))
 County of Jefferson v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00715))
 County of Lewis v. Abbott Labs, et al.)
 (N.D.N.Y. No. 05-CV-00839))
 County of Chautauqua v. Abbott Labs, et al.)
 (W.D.N.Y. No. 05-CV-06204))
 County of Allegany v. Abbott Labs, et al.)
 (W.D.N.Y. No. 05-CV-06231))
 County of Cattaraugus v. Abbott Labs, et al.)
 (W.D.N.Y. No. 05-CV-06242))
 County of Genesee v. Abbott Labs, et al.)
 (W.D.N.Y. No. 05-CV-06206))
 County of Wayne v. Abbott Labs, et al.)
 (W.D.N.Y. No. 05-CV-06138))
 County of Monroe v. Abbott Labs, et al.)
 (W.D.N.Y. No. 05-CV-06148))
 County of Yates v. Abbott Labs, et al.)
 (W.D.N.Y. No. 05-CV-06172))

County of Niagara v. Abbott Labs, et al.)
(W.D.N.Y. No. 05-CV-06296))
County of Seneca v. Abbott Labs, et al.)
(W.D.N.Y. No. 05-CV-06370))
County of Orleans v. Abbott Labs, et al.)
(W.D.N.Y. No. 05-CV-06371))
County of Ontario v. Abbott Labs, et al.)
(W.D.N.Y. No. 05-CV-06373))
County of Schuyler v. Abbott Labs, et al.)
(W.D.N.Y. No. 05-CV-06387))
County of Wyoming v. Abbott Labs, et al.)
(W.D.N.Y. No. 05-CV-06739))
County of Chemung v. Abbott Lab, et al.)
(W.D.N.Y. No. 05-CV-06744),)
)
AND)
)
County of Nassau v. Abbott Labs, et al.)
(E.D.N.Y. No. 04-CV-5120))
)

Plaintiffs concede that the “claims asserted by Suffolk were dismissed as to the ‘Suffolk 13+6’.... Suffolk joined in the [Consolidated Complaint], *only as to the new defendants.*” Opposition at 3 n.1 (emphasis supplied). The parties agree that Suffolk County may not revive its previously-dismissed claims simply by joining the Consolidated Complaint — and this is the one and only issue raised in Ivax and Barr’s Joint Renewed Motion to Dismiss. Because there is no dispute that the claims brought by Suffolk County as against Ivax and Barr have already been, and should remain, dismissed with prejudice,¹ Ivax and Barr² request that the Court enter the

¹ See *In re Pharmaceutical Indus. AWP Litig.*, 2004 WL 2387125, at *3 (D. Mass. Oct. 26, 2004) (“The Court *ALLOWS* . . . the motion to dismiss all claims against defendants . . . Ivax Corporation and Ivax Pharmaceuticals, Inc.”) (emphasis in original). Similarly, this Court dismissed Suffolk County’s Best Prices claims as against Barr in that same order, *see id.*, and thereafter dismissed all remaining claims brought by Suffolk County against Barr and the other “Suffolk 13” defendants. *See County of Suffolk v. Abbott Labs*, Docket No. 1482 (D. Mass. Apr. 8, 2005).

² This reply is submitted on behalf of Ivax Corporation and Ivax Pharmaceuticals, Inc. (collectively “Ivax”) and Barr Laboratories, Inc. (“Barr”), misidentified by Plaintiffs as “Barr Corporation.”

attached proposed order confirming the claims brought by Suffolk County in the First Amended Consolidated Complaint against these defendants remain dismissed with prejudice.

Dated: July 18, 2007

Respectfully submitted,

/s/ Pamela Zorn Adams

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CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2007, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Pamela Zorn Adams
Pamela Zorn Adams